JACK L. McCLELLAN
MARTON MAJOROS

IBLA 77-488, 77-489 Decided February 16, 1978

Appeals from decisions of New Mexico State Office, Bureau of Land Management, rejecting drawing entry card lease offer NM 29599, and declaring oil and gas leases NM 889-A and NM 890 terminated by operation of law for failure to make timely payment of rental.

Affirmed in part; set aside and remanded in part.

1. Oil and Gas Leases: Rentals--Oil and Gas Leases: Communitization Agreements--Statutory Construction: Generally

   Sec. 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188, providing for the automatic termination of a lease, not containing a well capable of production of oil and gas in paying quantities, for nonpayment of the annual rental, does apply to a lease which is entitled to an extension beyond its initial 10-year term because of termination of an approved communitization agreement under 30 U.S.C. § 226(j), even though notice of the extension was not given to the lessee in time for him to receive it and return the rental so that the payment would be received by BLM no later than the 11th anniversary date of the lease.

2. Oil and Gas Leases: Applications: Generally

   Regulation 43 CFR 3108.2-1(c)(3), which provides that a new lease for lands covered by a lease terminated automatically for nonpayment of rental shall not be issued until 90 days from the date of termination does

not preclude posting such lands to Notice of Lands Available to Oil and Gas Leasing, 43 CFR 3112.1-2, during the 90-day period.

3. Oil and Gas Leases: Applications: Drawings

An offeror whose drawing entry card is drawn with first priority for a parcel of land properly available at the time of posting is entitled to receive an oil and gas lease, all else being regular.

APPEARANCES: Don M. Fedric, Esq., George H. Hunker, Jr., Esq., Roswell, New Mexico, for appellant McClellan; Edward J. Hardin, Esq., Atlanta, Georgia, for appellant Majoros.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Marton Majoros appeals from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated July 7, 1977, which held that noncompetitive oil and gas leases NM 889-A and NM 890 each had been terminated by operation of law for failure to make timely payment of the rental due on December 1, 1976.

Jack L. McClellan appeals from a BLM decision dated July 7, 1977, rejecting his drawing entry card lease offer [DEC] NM 29599, filed in the December 1976, simultaneous filing procedure for lands formerly included in leases NM 889-A and NM 890.

These appeals will be considered in a single decision because of the interrelated complexion of the cases. We set out in detail the actions by BLM relative to the leases NM 889-A and NM 890, as well as to the lease offer NM 29599.

Noncompetitive oil and gas leases NM 889 and NM 890 were each issued effective December 1, 1966, for a primary period of 10 years and so long thereafter as oil and gas is produced in paying quantities. Following mesne assignments, lease NM 889-A was segregated from lease NM 889 and embraced NW 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4 sec. 34, T. 21 S., R. 22 E., New Mexico principal meridian. Lease NM 890 embraced SE 1/4 SW 1/4, E 1/2 sec. 34, T. 21 S., R. 22 E. As of January 5, 1974, W 1/2 SW 1/4 sec. 34, T. 21 S., R. 22 E., had been determined to be within the undefined known geologic structure [KGS] of the Rocky Arroyo Field. Lease NM 889-A was affected by this determination, with the annual lease rental thereafter being at the rate of $2 an acre, while the rental for lease NM 890 remained at the original rate of 50 cents an acre each year. On November 30, 1976, the terminal date of the primary terms of these leases, record title to lease NM 889-A was held by Great Western Drilling Company, 73.24 percent; Marton Majoros, 14.08 percent; Robert E. Boling, 6.34 percent;

and Mark D. Wilson, 6.34 percent. Record title to lease NM 890 was held 100 percent by Yates Petroleum Corporation, although operating rights to SE 1/4 SW 1/4 sec. 34 had been conveyed to Marton Majoros.

Effective March 25, 1974, Communitization Agreement SW No. 875 [Com. Agr. SW 875] was approved by the Geological Survey for the W 1/2 sec. 34, T. 21 S., R. 22 E., affecting both leases, NM 889-A and NM 890. The agreement covered dry gas and associated liquid hydrocarbons from the Morrow formation, and the term of the agreement was for 2 years and so long thereafter as oil or gas is produced in paying quantities. Operator under Com. Agr. SW 875 was Great Western Drilling Co. The No. 1 Reese Cleveland "B" Federal well, drilled under Com Agr. SW 875 in the NW 1/4 SW 1/4 sec. 34 was found to be nonproducing in the Morrow formation and was plugged and abandoned June 25, 1974. Prior to preparation of the December 1976 list of lands available to simultaneous filing of lease offers, 43 CFR 3112.1-2, the New Mexico State Office requested Geological Survey to confirm all leases expiring as of November 30, 1976, as well as to report which expiring leases were included in any KGS or were involved in any communitization agreement or were producing. The reply from Survey showed that leases NM 889-A and NM 890 were affected by Com. Agr. SW 875, that part of lease NM 889-A was KGS, and that there was no well capable of producing oil or gas in paying quantities on either lease. Thereafter, the State Office listed that part of NM 890 not within Com. Agr. SW 875 as Parcel 274 in the December 1976 list, and the parts of leases NM 889-A and NM 890 not within a KGS but within Com. Agr. SW 875 as Parcel NM 275, with the express provision that the successful drawee to Parcel NM 275 may be required to join Com. Agr. SW 875 before a lease issues. Although there was nothing of record to support a continuation of Com. Agr. SW 875 beyond its 2-year term, there had been no notice from Geological Survey that Com. Agr. SW 875 was not in existence on November 30, 1976, so BLM, on its record, concluded that both leases, NM 889-A and NM 890, had expired on that date by operation of law at the end of their initial 10-year lease term. In February 1977, Geological Survey notified Great Western Drilling Company that Com. Agr. SW 875 had been terminated as of March 24, 1976, and advised BLM that each lease, NM 889-A and NM 890, should be considered for a 2-year extension pursuant to 43 CFR 3107.5.

Any lease eliminated from a communitization agreement authorized by the Mineral Leasing Act, as amended, 30 U.S.C. 226(j) (1970), continues for the original term of the lease but for not less than 2 years after elimination of the lease from the agreement. Id., 43 CFR 3107.5. Thus, leases NM 889-A and NM 890 were entitled to extension until March 23, 1978, beyond the terminal date of their initial term, November 30, 1976. Rental for the 11th lease year commencing December 1, 1976, was due and payable on or before that date.

By decisions dated February 22, 1977, BLM notified the lessees of leases NM 889-A and NM 890 that each lease was entitled to a 2-year

extension from the date of termination of Com. Agr. SW 875, so the leases were being reinstated subject to payment of the 11th lease year rental within 30 days from notice, failing in which the lease would be considered to have terminated December 1, 1976, by operation of law, 30 U.S.C. § 188. The required rental payments were made within the stipulated period for each lease, $560 for lease NM 889-A, and $180 for lease NM 890.

BLM's decision of February 28, 1977, rejected DEC lease offer of McClellan, NM 29599, drawn first for Parcel NM 275 in the December 1976 simultaneous filing procedure for the reason that the land was erroneously posted because of the extension of the antecedent leases NM 889-A and NM 890 following termination of Com. Agr. SW 875. This decision was vacated by BLM in a decision dated March 30, 1977. No action was taken by BLM against the DEC of George S. Matick, NM 29598, which had received first priority to Parcel NM 274 in the December list, which also had been in antecedent lease NM 890.

In decisions dated July 7, 1977, BLM again rejected the DEC of McClellan, NM 29599, for the stated reason that the land in Parcel NM 275 had been prematurely posted, (and again BLM took no action against the DEC of Matick, NM 29598). BLM also vacated its decision of February 22, 1977, purporting to reinstate the leases NM 889-A and NM 890, and those leases were declared terminated for failure to have paid the rental for the lease year commencing December 1, 1976, on or before that date. The appeals of Majoros and McClellan followed.

Majoros argues that (1) the subject leases were held by production on December 1, 1976, by virtue of Communitization Agreement SW 720, or (2) if the decision of February 22, 1977, is correct as to the termination of Com. Agr. SW 875 appellant, being unaware of the fact (as also apparently was BLM) until after the expiration date of the leases, cannot be charged with failure to make timely payment of rentals and must be allowed a reasonable time after notice of termination of the Communitization Agreement to make such payments.

At the outset we point out that neither of the subject leases is affected by Com. Agr. SW 720, so that any production of oil or gas under that agreement cannot affect the leases under discussion. Also, there is no indication in the record that the so-called "Reese Cleveland Unit" ever was approved by the Geological Survey, 30 CFR 226.8.

Majoros miscontrues the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1976). Failure to pay the lease rental timely has placed appellant Majoros in a position where he can obtain no relief under existing law. Section 17 of the Act, 30 U.S.C. § 226(j) (1976), provides "Any lease which shall be eliminated from

any * * * communitization * * * agreement authorized by this section, * * * shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities." Although the Geological Survey ordinarily gives notice to the lessees affected of the termination of a communitization agreement, no action by BLM is necessary to effect the appropriate extension to an oil and gas lease beyond its primary term where such extension is proper. The extension is automatically granted by the statute. It is unfortunate that, in these cases, such a long delay occurred before Survey notified the participants in Com. Agr. SW 875 of the termination of that agreement under its own terms, with the result that BLM was unaware of the right of the lessees to an extension to the primary term of the subject leases. It is well settled, however, that the Government is not estopped by errors of its employees, and that failure of an employee to notify a lessee of an extension cannot confer any rights not authorized by law. See Charles M. Brady, 33 IBLA 375 (1978); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917).

However, in order for the lessee to exercise the rights granted by the Mineral Leasing Act, the lease involved must be maintained in good standing in accordance with the provisions of the Act and with the terms of the lease. A sine qua non for an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities is that rental must be paid "for each year of the lease," 30 U.S.C. § 226(d) (1976), "on or before the anniversary date of the lease," 30 U.S.C. § 188(b) (1976). This requirement is repeated in section 2(d) of the lease terms set out in appellants' leases. Without timely submission of the rental payment for the 11th lease year, the subject leases expired by their own terms on December 1, 1976.

The Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1976), further amended section 31 of the Act to allow reinstatement, under certain conditions, of any lease which had been thereafter terminated automatically by operation of law for failure to pay the annual rental timely.

We find that it was required that rental be paid for the lease year commencing December 1, 1976, the first year of the extended term of the subject leases, on or before December 1, 1976. Since such rental payment was not made, the leases terminated automatically by operation of law as provided by 30 U.S.C. § 188(b). Unless appellant can show that he is entitled to reinstatement of the leases under 30 U.S.C. § 188(c), he cannot enjoy an extension of the leases under 30 U.S.C. § 226(j).

It is noted that BLM treated the subject leases as having expired by operation of law on November 30, 1976, instead of having terminated by operation of law on December 1, 1976. That is, that each lease had run its statutory term, not that the term of the lease was curtailed for failure to pay timely an annual rental payment.

[1] All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Rosner v. Secretary of HEW, 306 F. Supp. 853 (S.D. Fla., 1970); Wesley Warnock, 17 IBLA 338 (1974); James V. Orbe, 16 IBLA 363 (1974). So, as a co-lessee of a Federal oil and gas lease Majoros knew, or should have known, the essential points of the regulations relating to such oil and gas leases, implementing the Mineral Leasing Act, as amended. Also he knew, or should have known, the terms of Communitization Agreement SW 875, involving leases in which he held interests, and the concomitant possibility of an extension to the primary term of the leases when the agreement expired under its terms. He knew, or should have known, that the obligation of the lessee to pay rental on or before the anniversary date of a Federal oil and gas lease arises from the statute itself, 30 U.S.C. § 188, and not from receipt of a courtesy notice from BLM that such a rental is due. Serio Exploration Co., 26 IBLA 106 (1970). Similarly, he knew, or should have known, that there was no well on either lease capable of producing oil or gas in paying quantities, so that continuation of each lease beyond its primary term of 10 years required a positive action on the part of the lessees, i.e., that of paying the rental due for the 11th lease year on or before December 1, 1976.

The statute provides for reinstatement of leases terminated automatically by operation of law only if rental is paid or tendered within 20 days after the due date, and it is shown to the satisfaction of the Secretary that failure to pay the rental on time was justifiable or not due to lack of diligence on the part of the lessee.

It was error for BLM to have issued its decisions of February 22, 1977, belatedly calling for payment of rentals due December 1, 1976, on leases NM 889-A and NM 890. The BLM decisions of July 7, 1977, vacating the decisions of February 22 are correct. The subject leases terminated for nonpayment of rental on December 1, 1976, and may not be reinstated because the ultimate payment of rental was not made within the 20-day period prescribed by law.

We look now at the appeal of McClellan, relating to offer to lease NM 29599. His drawing entry card (DEC) was drawn with first priority for Parcel NM 275 in the December 1976 Notice of Lands Available for Oil and Gas Leasing, 43 CFR 3112.1-2. This parcel included the non-KGS lands formerly in leases NM 889-A and NM 890 subject to

Com. Agr. SW 875, that is, the NW 1/4, E 1/2 SW 1/4, sec. 34, T. 21 S., R. 22 E. BLM, by decision of February 28, 1977, rejected offer NM 29599 for the reason that the lands included in the offer had been erroneously posted as available in the December 1976 simultaneous filing procedure. This decision was vacated by decision of March 30, 1977. Thereafter, on July 7, 1977, offer NM 29599 again was rejected for the reason that the lands in Parcel NM 275 had been posted prematurely, i.e., less than 90 days after termination of the antecedent leases by operation of law for nonpayment of rental, citing 43 CFR 3108.2-1(c)(3).

The cited regulation provides pertinently:

> (3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination.

[2, 3] McClellan contends, and we agree, that BLM misapplied the cited regulation. The prohibition in the regulation is only against issuance of a new oil and gas lease for land that was in a lease automatically terminated for nonpayment of rental until 90 days from the date of termination. The regulation does not proscribe posting of such lands as available for leasing before the 90th day after termination. The only proscription against posting land in leases terminated by operation of law for nonpayment of rental is in 43 CFR 3112.1-1, and that regulation only requires that the official records of the office must be noted of the termination of the lease before the lands therein are posted as available. We find, therefore, that the posting in Parcel NM 275 in the December 1976 list of lands available was proper, that the DEC of McClellan, having received first priority in the public drawing for the parcel, is entitled to be accepted and a lease issued, all else being regular.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions relating to the termination of leases NM 889-A and NM 890 are

affirmed, and the decision rejecting offer NM 29599 is vacated and that case is remanded for further appropriate action.

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Douglas E. Henriques
Administrative Judge

We concur:

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Frederick Fishman
Administrative Judge

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Martin Ritvo
Administrative Judge